

FILED**AUGUST 28, 2009**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTUNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**RECEIVED**AUG 14 2009 *mb*MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTTavares Hunt I.D.# 2005-00-20813)
Lee McCorker I.D.# 2008-00-33535)
Bruce Giles I.D.# 2008-00-16005)
Jose H. Romero I.D.# 2003-00-92847)
George Cortez I.D.# 2008-00-71932)

plaintiffs,)

-vs-)

Thomas Dart)
Micheal Miller)
Avery Hart)
David Fagus)

defendants,)

Case No: 09 CV 2071

Judge : Kennelly

THIRD AMENDED COMPLAINT

This is a civil action authorized by 42 U.S.C. section 1983 to redress the deprivation, under the color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. section 1331 and 1343(a)(3). The plaintiff's claims for injunctive relief are authorized by 28 U.S.C. section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure.

1). The Northern District of Illinois, Eastern Division is an appropriate venue under 28 U.S.C. section 1391(b)(2) because it is where the events giving rise to this claim occurred.

2). Plaintiff's, Tavares Hunt, Lee McCorker, Bruce Giles, Jose H. Romero and George Cortez are and at all times mentioned in this complaint pretrial detainees, housed in Division ten of the Cook County Jail (CCJ) in the state of Illinois, in the custody of the Cook County Department of Corrections (CCDOC). They are currently being confined at the CCJ in Chicago Illinois.

3) The Defendant, Thomas Dart, is the sheriff of Cook County and it is his legal responsibility to govern the CCDOC and the CCJ as well as all of its departments and officers, supervisors and medical staff. It is also his legal responsibility to maintain a clean and infection free, virus free environment.

4). The Defendant, Michael Miller, is the superintendent of Division Ten and it is his legal responsibility to ensure the safety of all the pretrial detainees that are being housed in division ten. And also to maintain a safe secure and disease free, virus free, infection free environment.

5). The Defendant, Avery Hart, is the medical director of the CCJ and CCDOC it is his legal responsibility to detect and prevent the spread of infectious diseases, viruses, and to have a staff readily available to deal with any type of out break that could occur in the jail. To also inform the detainees of what is going on as far as medically

or other wise health concerning to the detainees so that they can take the appropriate measures^{to} get the treatment that is required to keep them disease and virus free.

6). The Defendant, David Fagus, is the Chief Enforcement Officer of Cermak Health Services and it's his legal responsibility to ensure that his staff is readily available to handle any and all infectious diseases, viruses and so forth. To ensure that his staff is trained in the latest viral infections and diseases. To have a vaccine or other type of medication ready for these type of out breaks. To inform the sheriff and others in the administration about the spread or possible spread of infectious diseases or viruses in the CCJ. Also to formulate a plan to combat the spread of these types of viruses and a plan to contain it if necessary. To inform the jail population as to what steps to take if a virus or disease would be detected in the jail. How to combat it and how to keep the jail free from these type of things.

FACTS

1). That on or about 12 February, 2009 the CCJ officials came into the knowledge that there was a virus going through the jail. Because of detainees becoming sick in division ten. These detainees had symptoms of diaherra, vomitting, head aches, abdominal cramping and high fevers.

2). The virus was later identified as Viral Gastrointestinal some time in the month of march of 2009. It was later found out through Supertendent Michael Miller that the first signs of this virus came back in December of 2008 and the jail was aware of this as well as David Fagus, Avery Hart. But yet they failed to inform the CJJ population of this infectious disease nor was there any steps taken to rid the jail of this virus, nor was there any steps taken to stop the spread of this virus.

3). Detainee Tavares Hunt complained of having stomach cramping, high fevers, diahrrea, vomitting and head aches in december of 2008. Until march of 2008 and is still to this day experiencing symptoms of headaches vomitting and abdominal cramping he has still not gotten the proper treatment and it is now july of 2009.

4). Detainees Lee McCorker, Bruce Giles, Jose H. Romero and George Curtez all started having the same symptoms of running high fevers, abdominal cramping, vomitting and head aches. They all reported these symptoms to the nursing staff and to the correctional officers working the tiers but there complaints fell on deaf ears. They were not treated right away.

5). These detainees suffered to the point that they could not eat nor sleep for days at a time and finally they each filed a grievance to try and get there serious medical needs met by the staff at the CCJ. All the while the staff at CCJ knew that there was a virus running rampant in the jail and fail to inform the detainees or to do anything about keeping it contained nor medicate the infected.

6). In March of 2009 the CDC (Center for Disease Control) came into the jail and notified us finally that the Gastrointestinal virus was at large in division ten. That they were monitoring it and then the jail started to clean up the individual cells and to treat people for the virus. But by then the virus had already had a three month head start and was taking its toll on the detainees and there families for the ones that were discharged without knowing what was wrong with them.

7). The detainees were kept in the dark until the CDC came in the jail back in march of 2009. The doctors have a way of detecting a virus by various testing and so fourth none of which was done until the CDC came into the picture and the CCJ had the means and the man power to do so but just ignored the symptoms and signs that were all around them.

8). The national center for immunization and respiratory disease states: "Gastriontestinal is including rota-viruses, noro-viruses, adeno-viruses, type 40 or 41 sapor- viruses and stro-viruses. Viral gastriontestinal is not caused by bacteria such as Salmonella, or Parasite such as Giardial, or by medications or other medical conditions although the symptoms may be similar." Doctors can determine if the diahrreah is caused by a virus or something else.

9). The plaintiff's were told nothing, nor given information or medication or medical advice when first they complained about the symptoms of gastriontestinal virus they were experiencing until the symptoms were seen by the CDC and they came into the jail. The plaintiff's are still suffering from a back lash of symptoms of the virus and there serious medical needs are still being ignored by the medical staff of the CCJ.

10). The plaintiff's state a (Monell) claim in that it is a custom practice and a policy at the CCDOC that failed to detect the viruses in the instant. These issues have been pleaded in other claims against the CCJ. citing **MONELL vs.DEPT.SOCIAL SERVICES 436 U.S. 658 (1978)**.

CAUSES OF ACTION

1). The actions of Thomas Dart and Michael Miller being the sheriff of Cook County Department of Corrections and Miller the Superintendent of Division ten of the CCDOC in that they failed to act in a timely mannor in informing the detainees of the Gastrointestinal virus. And that they failed to prevent the spread of this infectious virus throughout Division ten of the CCDOC. They also failed to treat the detainees for symptoms of diaherra, headaches, vomitting, dizzyness and abdominal cramping in which the plaintiffs are still suffering from to this day, when they had knowledge of this virus since december of 2008. This constitutes a deliberate indifference to the plaintiff's rights under the 14th Amendment of the U.S. Constitution and Article 1 Section 2 of the State Constitution of Illinois.

2). The Actions of Dr, Avery Hart and David Fagus being in charge of Cermak Health Services and failing to prevent the spread of the Gastrionetestinal virus, failing to treat the plaintiff's for thier symptoms when they had knowledge of the virus being in the jail from December of 2008 until march of 2009 when the Center for Disease Control (CDC) came into the jail and instituted a treatment plan and a plan for containment. They also gave out information pertaining to the virus, it's effects on the body and how long it is supposed to be in the system. Defendants Dr. Hart and David Fagus failed to treat the plaintiff and because of there negligence the plaintiff's are still suffering to this day.This Constitutes a deliberate indifference to the plaintiff's rights under the 14th Amendment of the U.S. Constitution and Articl 1 Section 2 of the Illinois State Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiff's respectfully prays that this Honorable Court enter a judgement in their favor granting the following relief;

- 1). Health care for their ongoing health problems and serious medical concerns pertaining to the Gastrointestinal virus and its side affects.
- 2). That all defendants be found to be liable both jointly and severably
- 3). That compensatory damages be awarded in an amount to be determined by the court.
- 4). That punitive damages be awarded in an amount to be determined by the court.
- 5). A trial by jury on all triable issues.
- 6). And any other relief that the court deems just.

Dated: 3 August 2009

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